REMARKS

Claims 1-68 are pending in this application. Claims 1-67 have been rejected under 37 C.F.R. §103(a). Claims 1, 6, 7, 10, 21, 30, 41, 46, 47 and 50 have been amended in this response. New dependent claims 68-69 have been added.

Rejections under 35 U.S.C. §103(a)

Claims 1, 21 and 41 were rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 5,365,579 (hereinafter "Hendrickson"). Claims 2-20, 22-40, and 42-67 were rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 5,365,579 by Hendrickson (hereinafter "Hendrickson") and further in view of U.S. Patent Application Publication No. US-2002-0026256 by Hilton (hereinafter "Hilton"). Applicants have amended the claims to further clarify the invention.

To establish a prima facie case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference must teach or suggest all of the claim limitations. MPEP § 2143. The invention is not obvious because the Office fails to establish one or more of the criteria above.

Summary of the invention

For example, a jazz trumpet student who has been practicing a certain piece of music sits down at the client device and selects an audio file of the music of interest. The musical piece is provided on the client device where the student is located. The musical piece may be provided in different ways such as by downloading or streaming the musical file. In this example, the musical file does not contain the trumpet section because the jazz trumpet student will play his trumpet along with the playback of the selected piece of music and fill in the empty trumpet section with his/her own performance. Thereby, this invention permits students of music to

perform with recordings of great musical masters and their bands or great orchestras, record their performance and then listen to their recording to see how close they came to playing like a master. This way, the student trumpet player can learn or be evaluated by a teacher such as for an audition. Either way, it is great fun for an ordinary or extra-ordinary musician to play with the greats in one's very own home.

To make this work, the client device contains an audio playback program that will play the musical piece. In one embodiment, the audio playback program is a stream player such as Windows RealPlayer or Quicktime. Another program called an audio capture program will capture the musician's performance at the client device via hardware such as a microphone. A musician has to be ready to perform after the music starts and cannot be bothered with pressing buttons to start recording the performance. So, another program called the synchronization program is provided that will communicate between the audio playback program and the audio capture program to make this happen. For example, the synchronization program will monitor the audio playback program. If it's a stream player, the downloading of the musical file will go from downloading to buffering to start of play. After a first state change is detected, the synchronization program will prepare the audio capture program. After a second state change, the synchronization program will initiate the audio capture program. The second state change is associated with the audio playback program and indicates the start of audio playback. In the stream player embodiment, when the audio stream player transitions from a buffering state to a playback state, the synchronization program commands the audio capture program to initiate audio capture. The captured data can then be sent to another computer.

The Prior Art

Hendrickson discusses two studios and certain data transmitted between them. A motion picture and its associated soundtrack are transmitted separately from one studio to another. Along with these two files, a synchronization signal is transmitted so that when the two files are received at the other studio, the picture and the audio files can be pieced together so that the sound is in synch with the picture. Hendrickson discusses other synchronization signals that are

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transmitted from studio A to studio B to synchronize other data files. These other synchronization signals include signals for (1) the remote control of equipment, (2) intercom for human communication and (3) a time delay signal to account for delays in the system.

Argument

In contrast to Hendrickson, our invention does not transmit synchronization signals from the server device to the client device (studio A to studio B in Hendrickson). Instead, our system detects state changes taking place in the client device. According to the claims, these state changes are not transmitted from the client device to the server device. In particular, our synchronization program detects state changes taking place in the audio playback program. Because both programs are at the same location, state changes originate in the client device and terminate in the client device.
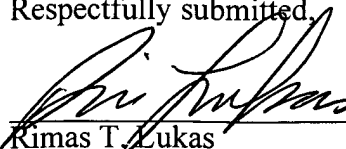
Furthermore, in the client device, the synchronization program does not synchronize two already existent files to piece them together in the right spots after being received from another studio as in Hendrickson. Instead, in response to a state change, the synchronization program initiates and commands the audio playback program to start audio capture. And in fact, if the student musician starts playing late, the mistake will be preserved in the recording and not subsequently synched to perfection as required in Hendrickson. For these reasons and because Hendrickson alone or in combination with Hilton does not disclose, teach or suggest these claim limitations found in the independent claims, these claims and their respective dependent claims are nonobvious.

In view of the foregoing remarks, applicants respectfully submit that the application is in a condition for allowance, and action toward that end is earnestly solicited. In the event that a telephone conference would expedite prosecution of this patent application, the Examiner is invited to contact the Attorney for Applicants at the number listed below.

Respectfully submitted,

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